*THE HON'BLE SRI JUSTICE V. ESWARAIAH

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+WRIT PETITION No.24836 OF 2005

%Dated 29-11-2005

T. Suryanayak, S/o. Tulisa.

Petitioner

VERSUS

$ The District Collector, Khammam & others.

Respondents

! Counsel for Petitioner: MR. K. VINAY KUMAR.

^Counsel for Respondents: GP FOR CIVIL SUPPLIES.

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> HEAD NOTE:

? Cases referred

1. 1996 (3) ALD 885

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 24836 of 2005

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Dated:29.11.2005

Between:

T.Suryanayak, S/o.Tulisa,
Shop No.1 (Under Cancellation Proc), R/o.Banapuram

Village, Mudigonda Mandal,
Khammam District.

..... PETITIONER

AND

The District Collector, Khammam, and others.

.....RESPONDENTS

ORDER:-

This writ petition is filed to declare the order issued by the 1st respondent in proceedings, dated 15.10.2005, as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to restore the authorization of the petitioner's fair price shop.

The petitioner is a Fair Price Shop Dealer, Banapuram village of Mudigonda Mandal, Khammam District. Basing on the allegations that the petitioner has committed certain irregularities in supplying the essential commodities, a show cause notice, dated 11,10,2002, was issued framing the following four charges:

> "Charge No.I:- That there is variation of stock of Qtls. 12.55 Rice and 0.77 kgs. Sugar less in the ground balance with stock register.
>
> Charge No.II:- That the dealer has tampered the issues in the record willfully.
>
> Charge No.III:- That the dealer has distributed the Rice to non-card holders.
>
> Charge No.IV:- That the dealer has distributed 0.25 Kgs. Rice to AAY Beneficiaries instead of 0.35 Kgs."

The petitioner filed his explanation on 28.10.2002. After considering the explanation, the Revenue Divisional Officer, Khammam, held that all the four charges have been proved beyond reasonable doubt, and that the petitioner was not maintaining true and correct accounts and involved in clandestine

business diverting the PDS commodities into black market to get more benefits, and accordingly, the dealership has been cancelled vide his proceedings Rc.No.C2/1258/2002, dated 29.10.2002. Against the said order, the petitioner filed an appeal in Appeal No.D/610/2002 before the Joint Collector, Khammam, who is the appellate authority, and the appellate authority by his order, dated 25.01.2003, dismissed the appeal. Against the said order, the petitioner filed a revision in Revision No.D/123/2002 before the District Collector, which was also dismissed on 15.10.2005. Aggrieved by the same, the present writ petition has been filed.

The revisional authority thoroughly considered all the contentions of the petitioner and held that the petitioner has violated the conditions of the authorization under Clause 5, 4(i) and (ii), 8 and 11 of A.P. State Public Distribution System (Control) Order, 2001, and failed to maintain true and correct accounts, failed to perform his duties in maintaining the ground stocks with book balance every day and the variation is beyond permissible limit, dismissed the revision confirming the order of the Revenue Divisional Officer and Joint Collector.

The learned counsel appearing for the petitioner submits that under Clause 5 (4) the authorization cannot be cancelled without making any enquiry and he would be given a reasonable opportunity and in support of his contention he relied on the judgment of this Court reported in ***B.VENKATESWARA RAO v REVENUE DIVISIONAL OFFICER, BHADRACHALAM, KHAMAM DISTRICT & ANOTHER*** wherein, the authorization was straight forward suspended without giving any notice or without affording any opportunity as a measure of substantive punishment. Therefore, this Court held that the suspension of authorization without giving any notice and reasonable opportunity is against the principles of natural justice.

Admittedly, in the instant case, enquiry has been conducted by way of giving a show cause notice and after considering the explanation, a reasoned order has

been passed. As per Clause 5 (4) the legal requirements that have to be followed are the appointing authority has to make an enquiry, as may be deemed necessary and the order has to be passed after recording the reasons in writing. In a given case where the dealers are required to conduct an enquiry in a particular fashion or request to give the personal hearing and that request is exempted, of course, it is a different matter to consider whether the reasonable opportunity of being heard is given or not, but in the absence of any specific request for offering the personal hearing, it cannot be said that the principles of natural justice are violated.

The legal requirements are indeed to make an enquiry and reasons to be recorded in writing in the order of suspension or cancellation, as the case may be. In such circumstances, I am of the opinion, that though the requirements have been followed in the instant case, it cannot be said that the principles of natural justice have been violated.

For the aforesaid reasons, I do not find any merits in the writ petition and the same is accordingly dismissed at the admission stage.

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29.11.2005

Note:- LR copy to be marked.

B/o.

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